

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH H. HEFFLEY, JUDGE

DIVISION II

CA07-66

March 5, 2008

GOPAKUMAR MARUTHUR
APPELLANT

AN APPEAL FROM GARLAND COUNTY
CIRCUIT COURT, [No. DR 2003-1000-II]

v.

HONORABLE VICKI S. COOK,
CIRCUIT JUDGE

PEGGY MARUTHUR
APPELLEE

AFFIRMED ON DIRECT APPEAL; AFFIRMED
ON CROSS-APPEAL; MOTION GRANTED
IN PART AND DENIED IN PART

This appeal involves the financial aspects of the dissolution of a marriage that lasted approximately thirty years. Both parties sought a divorce in the Garland County Circuit Court. Following a bench trial in August 2005, the circuit court granted appellee Peggy Maruthur (“Wife”) a divorce from appellant Gopakumar Maruthur (“Husband”) and approved the parties’ partial settlement of property and debt issues. The court reserved jurisdiction for the resolution of the remaining property issues. In a decree entered June 23, 2006, the court classified the parties’ assets, divided the marital estate and debts, and awarded Wife \$1 per year in nominal, modifiable alimony. Both parties appeal. Husband raises seven points in which he takes issue with the manner in which the circuit court classified the parties’ assets and divided the marital estate. On cross-appeal, Wife asserts that the circuit court erred

in requiring her to repay certain interim support payments. We affirm. We also grant in part and deny in part Wife's motion for attorney fees and costs.

The parties were married on July 7, 1976, and two children, now grown, were born of the union. Husband is a physician who formerly practiced as an endocrinologist. Husband closed his practice in 1998. His income at the time of trial consisted of social security disability benefits of \$1,588 per month and payments from two disability benefits policies totaling \$10,327.50 per month.¹ Wife did not work outside the home after the marriage. She ran for and was elected to the Hot Springs Board of Directors, an unpaid position.

Wife filed her complaint for divorce on October 17, 2003.² Husband answered the complaint and sought an unequal division of the parties' marital property, based on a comparison of the parties' health, vocational skills, and employability. Husband also filed a separate counterclaim for divorce that sought an unequal division of the marital property.

There were extensive proceedings involving the parties' various financial accounts and payment of the parties' bills and expenses. The court ultimately appointed an independent manager to pay the bills and expenses. Wife was awarded temporary alimony of \$3,123 per month by order entered on February 27, 2004.

On June 24, 2004, the court entered an order providing that Husband's monthly social security and disability benefits payments were to be made to the court-appointed manager,

¹The parties also owned rental property and had income from that source. However, such income is not an issue in this appeal.

²Wife later amended her complaint to seek an unequal division of the marital property. Wife amended her complaint a second time to assert eighteen months' separation as grounds for divorce.

who was to pay the monthly bank drafts, which totaled \$5,676.20, and the minimum monthly payments on several credit card accounts. After payment of these sums, the manager was then to pay each of the parties one-half of the sums which remained.

Finally, on August 30, 2005, the court entered its initial divorce decree. In addition to granting Wife a divorce, the court approved the parties' agreement for the division of some of the marital property. Among the items awarded to Wife were the house at 133 Circle Drive, another piece of property in downtown Hot Springs, her vehicle, some sculptures, and personal property. Husband received his 1985 Mercedes Benz, a 2000 Lexus subject to a debt, the Arbor Street house in which he was living, the duplex apartments, various items of personal property and a "\$1.5 million insurance policy" on his life with all cash surrender value.

At trial, the major issues to be decided were whether Husband's Unum Provident disability benefits were marital property and whether certain jewelry was marital property or gifts to Wife.

The background of the disability issue is as follows. On February 16, 1996, there was an explosion and fire in the medical building where Husband had his offices. The fire occurred during the installation of a piece of medical equipment. Husband, who was not present at the time of the explosion, contended that his disability was the result of his exposure to toxic carbon-monoxide fumes when he visited his office on February 18, 1996. Husband testified that, upon entering his office, he was overcome by the fumes and had to be taken by a friend to the emergency room. He remained hospitalized until March 6, 1996.

According to the deposition testimony of Dr. John S. Meyer, Husband suffered a stroke as a result of his exposure to the carbon-monoxide fumes. Meyer testified that the medical records indicated that Husband had a carbon-monoxide level in excess of 10%. In Meyer's opinion, the carbon monoxide caused an atrial fibrillation that disrupted the rhythms of Husband's heart, causing a stroke, which resulted in a deep frontal-lobe lesion. Meyer also linked Husband's other medical problems and disability to the stroke and carbon-monoxide exposure.³ Meyer, who was an expert witness rather than Husband's treating physician, acknowledged that his opinion was based on his review of Husband's medical records, which included a medical history given by Husband. He also conceded that atrial fibrillations are common, having several possible causes.

Randall Fale, the long-time chief executive officer of St. Joseph's Mercy Medical Center, testified about the fire and noted that, on Sunday, February 18, 1996, there was concern that the building was unsafe due to carbon monoxide. He stated that carbon-monoxide detectors were used on every floor of the building that day and that the hospital was found to be clear of carbon monoxide.

Edward Davis, the current chief of the Hot Springs Fire Department and a fire marshal in 1996, testified that his men broke windows open in an effort to remove carbon monoxide from the building after the fire. He also testified that carbon-monoxide detectors were also used and did not detect any fumes. Davis also testified that the heating and ventilation system

³Husband's other health problems include renal cancer resulting in the loss of a kidney, sleep apnea requiring the use of a breathing machine, acoustic neuroma (a brain tumor), depression, and bilateral keratoconus, resulting in his being legally blind in his left eye and having only partial vision in his right eye.

was shut down at the time of the fire to prevent smoke from spreading to other parts of the building. The ventilation system resumed operation at approximately 4:00 to 4:30 p.m., prior to the building being released by the fire department at 5:10 p.m. on February 16, 1996. On cross-examination, Davis acknowledged that there could have been dangerous carbon-monoxide levels in parts of the building the fire department did not enter.

James Briggs, the former vice president of St. Joseph's Hospital in charge of maintenance and housekeeping, among other duties, testified concerning the fire and cleanup. He testified that the medical office building had a single ventilation system for the entire building. He said that each office has its own heating and cooling unit. He said that the individual offices could not control the exhaust and ventilation system, which operates continuously except for brief periods of preventive maintenance. He opined that it was not possible for Husband's suite of offices to have been different from the other offices because the air in Husband's offices was completely changed every thirty-three minutes. On cross-examination, Briggs testified that he was not aware that Husband's suite could have operated on separate heating and air units. He also testified that carbon monoxide detectors were used, with one placed fifty to sixty feet from Husband's suite.

Also at trial, Wife introduced an appraisal of over sixty pieces of jewelry contained in a safe deposit box at a local bank. The jewelry had an estimated replacement value of \$29,030. This included several items that the appraisal indicated were stipulated as belonging to Wife prior to the marriage. Wife testified from the appraisal and identified each item as belonging to Husband, a gift to her from Husband or one that she purchased at Husband's direction, belonging to the parties' daughter, or jewelry that had belonged to Wife's family members.

Wife could not remember what several of the pieces of jewelry looked like without viewing them. There was testimony from the parties' daughter and one of Wife's friends generally corroborating her testimony.

Husband testified that he often gave Wife gifts of cards, cars, clothes, flowers, vacations, and at least one piece of jewelry. However, he testified that all of the jewelry contained in the safe deposit box was purchased for investment purposes. Husband said that certain items were gifts, but others were not.

On May 4, 2006, the circuit court entered a lengthy letter opinion addressing those issues that the parties had not resolved. In the letter opinion, the court found that the overwhelming evidence was that Husband had not been exposed to carbon-monoxide poisoning at his office and that, therefore, the disability payments he received did not fall within an exception to the marital property statutes. The court did find, however, that Husband's social security disability benefits were non-marital property. The court noted that Wife had never disputed that these benefits were not marital property. Accordingly, the court found that Wife owed Husband \$18,597.50 for one-half of the social security benefits as repayment for funds disbursed to her during the pendency of the divorce.

As to a separate \$250,000 term life insurance policy, the court ruled that it should belong to Wife to insure that she would not suffer an undue hardship in the event Husband were to die. The court found that Wife had no skills and had not been allowed to further her education and that a foot condition would make full-time employment impractical. At the same time, the court found that Husband had many physical conditions that would make full-time employment a challenge but found that he had marketable skills and could practice as an

emergency room doctor or general practitioner. The court also noted that Husband would be an excellent medical consultant or expert witness and, therefore, his earning capacity exceeded that of Wife. As a result, the court awarded Wife \$1 per year in nominal alimony.

The court also considered the evidence concerning the jewelry acquired during the marriage and found that the women's jewelry and grandfather's jewelry should be awarded to her as her separate property. The court found that all debts acquired up to the date of separation, October 17, 2003, would be divided equally between the parties. The court addressed assets held by the Maruthur Diabetic Center, valued at \$32,279.34, and declared those assets to be marital to be divided equally.

The court specifically found that it would not be fair and equitable to award either party an unequal division of property. Therefore, the court ordered an equal division of all marital assets. The court then looked to the previous settlement agreement and determined that, pursuant to the court's letter opinion and the settlement agreement, Husband was receiving assets of a slightly lesser value than the assets being received by Wife. To equalize the division, Wife had to give up her interest in the Arkansas Deferred Compensation Fund and cash. Finally, the court awarded Wife \$45,000 in attorneys fees, less a credit of \$10,867.50 previously paid by Husband. A decree memorializing these findings was entered on June 23, 2006. This appeal and cross-appeal followed.

With respect to the division of property in a divorce case, we review the circuit court's findings of fact and affirm them unless they are clearly erroneous. *Cole v. Cole*, 89 Ark. App. 134, 201 S.W.3d 21 (2005). A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been

committed. *Id.* In order to demonstrate that the circuit court’s ruling was erroneous, an appellant must show that the court abused its discretion by making a decision that was arbitrary or groundless. *Id.*

Husband first argues that the circuit court erred in finding that the Unum Provident disability benefits were marital property. He asserts that the benefits were exempt from the definition of “marital property” under Ark. Code Ann. § 9-12-315(b)(6) (Repl. 2002).⁴ The burden of proving that a specific property is or is not marital property remains on the party who asserts that it is separate property not subject to division. *Aldridge v. Aldridge*, 28 Ark. App. 175, 773 S.W.2d 103 (1989).

The circuit court relied on *Mason v. Mason*, 319 Ark. 722, 895 S.W.2d 513 (1995), in determining that Husband’s disability benefits were marital property subject to division. In *Mason*, the supreme court developed a two-prong test to determine whether disability payments were exempt from the definition of marital property. The first prong requires that the claim be for a degree of permanent disability or future medical expenses. Second, the injury must be sustained while on the job or in the consequence of a tortious act. *Id.* The court held that the benefits did not fall within the statutory marital-property exemption

⁴Section 9-12-315(b)(6) provides as follows:

(b) For the purpose of this section, “marital property” means all property acquired by either spouse subsequent to the marriage except:

. . . .

(6) Benefits received or to be received from a workers’ compensation claim, personal injury claim, or social security claim when those benefits are for any degree of permanent disability or future medical expenses[.]

because Mason's permanent disability from wounds suffered during World War II did not relate to a claim for "personal injury." See also *Skelton v. Skelton*, 339 Ark. 227, 5 S.W.3d 2 (1999); *Scott v. Scott*, 86 Ark. App. 120, 161 S.W.3d 307 (2004); *Frigon v. Frigon*, 81 Ark. App. 314, 101 S.W.3d 879 (2003).

Husband relies on testimony from Dr. Meyer concerning the effects of exposure to carbon monoxide, as well as its causing Husband's frontal-lobe lesion. However, he does not discuss the testimony that the building did not contain carbon-monoxide fumes on February 18, 1996, the date he asserted that he was exposed to the toxic fumes. Further, the circuit court explained at length why it concluded that Husband failed to prove that the disability payments were the result of a "personal injury" resulting from the exposure to carbon monoxide. This explanation also included observations as to the credibility of Dr. Meyer. Therefore, the court concluded that Husband's disability benefits were not the result of a "personal injury" within the meaning of Ark. Code Ann. § 9-12-315(b)(6). When the circuit court's classification of an item as marital property depends upon the resolution of disputed facts, we cannot say that the circuit court's decision was clearly erroneous. *Johnson v. Cotton-Johnson*, 88 Ark. App. 67, 194 S.W.3d 806 (2004).⁵

The circuit court's award to Wife of \$1 per year as alimony is attacked in Husband's second point. Husband argues that the award is not reasonable under the circumstances because Wife has the ability to work and support herself while Husband is disabled and precluded from employment.

⁵We do not address the issue of whether the disability policies could be considered marital property by virtue of having been purchased with marital funds.

The decision whether to award alimony is a matter that lies within the circuit court's sound discretion, and we will not reverse the decision to award alimony absent an abuse of that discretion. *Cole, supra*. The primary factors that a court should consider in determining whether to award alimony are the financial need of one spouse and the other spouse's ability to pay. *Id.* A court may also consider other factors, including the parties' financial circumstances; the amount and nature of the parties' income, both current and anticipated; the extent and nature of the parties' resources and assets; and the parties' earning ability and capacity. *Id.*

Husband is correct to note that the circuit court was attempting to reserve jurisdiction for a possible future modification of the alimony award. However, Husband is incorrect when he argues that such a prospective award cannot stand. In *Mulling v. Mulling*, 323 Ark. 88, 912 S.W.2d 934 (1996), the supreme court upheld the trial court's reservation of an award for a specific amount of alimony until a future time when the circumstances permitted a modification (*i.e.* until the husband could find employment sufficient to enable him to pay). *Mulling*, together with *Grady v. Grady*, 295 Ark. 94, 747 S.W.2d 77 (1988), eliminated the requirement that a trial court must award a nominal sum of alimony in order to retain jurisdiction for a later modification, as was done in *Ford v. Ford*, 272 Ark. 506, 616 S.W.2d 3 (1981). Here, the circuit court considered the proper factors before it made the nominal award of \$1 per year as a means of reserving jurisdiction contingent upon Wife's continued receipt of one-half of the disability insurance payments. Therefore, we cannot say that the circuit court abused its discretion in awarding Wife alimony.

The circuit court found that certain jewelry was Wife's separate property as gifts from Husband, and Husband's third point contends that this finding is erroneous. In reviewing a circuit court's decision on whether an item is marital property, we will not reverse unless the court's ruling is clearly erroneous. See *Coombe v. Coombe*, 89 Ark. App. 114, 201 S.W.3d 15 (2005). Here, wife testified that certain items were gifts to her from Husband, while Husband testified that most of the jewelry was purchased for investment purposes. The circuit court accepted Wife's testimony and awarded her the items she claimed were gifts and awarded Husband the items Wife stipulated belonged to him. Because there was conflicting testimony about whether a gift of the jewelry was intended, we cannot say that the circuit court's decision was clearly erroneous. See *Johnson v. Cotton-Johnson*, *supra*; *Scott*, *supra*.

Husband's fourth point is that he should have been awarded an unequal division of the marital estate. He bases his argument on his health problems and concomitant disability. Arkansas Code Annotated section 9-12-315(a)(1) provides that all marital property shall be distributed one-half to each party unless the circuit court finds that distribution to be inequitable. The statute then authorizes the court to make another division that it deems equitable after consideration of certain listed factors.

Husband's argument, by focusing only on his asserted health problems, fails to properly consider the statutory factors to be considered in cases where an unequal division of marital property is awarded. He asserts that Wife is able-bodied and capable of obtaining employment. However, this ignores the fact that Wife does not have a college degree and did not work outside the home during the marriage. It also ignores Wife's own health problems, such as the fact that she has asthma and cannot stand for more than thirty minutes at a time due to her

foot problems. The circuit court considered these factors when deciding upon an equal distribution of the marital property, with the court noting that Husband's medical condition may be more severe than Wife's but that Husband has the greater educational background and earning capacity. The application of the factors under section 9-12-315(a)(1)(A) is a factual determination that this court will not reverse unless clearly against the preponderance of the evidence. *See Russell v. Russell*, 275 Ark. 193, 628 S.W.2d 315 (1982). We will not substitute our judgment on appeal as to the exact interest each party should have but will only decide whether the order is clearly wrong. *Coombe, supra*. We cannot say that the order is clearly wrong in this case.

For his fifth point, Husband argues that each party should have been responsible for his or her own attorney's fees. Citing *Jablonski v. Jablonski*, 71 Ark. App. 33, 25 S.W.3d 433 (2000), for the proposition that in determining whether to award attorney's fees the circuit judge must consider the relative financial abilities of the parties, Husband asserts that the circuit court erred in ordering him to pay his ex-wife's attorney's fees because the parties are in an "undeniably, absolutely equal financial situation." Additionally, Husband asserts that his inability to work makes this case analogous to *Jablonski*. Finally, he argues that the circuit court

erred because there is no “indication” that it considered any of the “factors” in the “*Chrisco*”⁶ case.” We find this argument unpersuasive.

First, the factual underpinning of Husband’s argument is flawed. Contrary to his assertion, the parties’ finances were not “undeniably, absolutely” equal. Husband receives \$1588 per month in social security disability income, which the circuit judge found to be non-marital property. Furthermore, the circuit judge’s finding that Husband was able to be gainfully employed as a physician was not clearly erroneous. We note that it is this latter fact, coupled with the complementary finding that Wife had limited job skills and education, that makes *Jablonski* inapposite.

Finally, we reject Husband’s assertion that the circuit court erred because it did not make findings in accordance with the *Chrisco* factors. It is settled law that circuit courts have inherent power to award attorney’s fees in domestic relations proceedings. *See Miller v. Miller*, 70 Ark. App. 64, 14 S.W.3d 903 (2000). Husband has not cited a case, nor have we found one, whereby a circuit court was required to make express findings relative to the *Chrisco* factors in domestic relations cases. This court will not address an argument on appeal that has not been sufficiently developed, and it is not apparent without further research that the

⁶Husband is referring to *Chrisco v. Sun Industries, Inc.*, 304 Ark. 227, 800 S.W.2d 717 (1990). The “factors” he refers to are the experience and ability of the attorney; the time and labor required to perform the legal services properly; the amount involved in the case and the results obtained; the novelty and difficulty of the issues involved; the fee customarily charged in the locality for similar legal services; whether the fee is fixed or contingent; the time limitations imposed upon the client or by the circumstances; and the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

appellant's point is well taken. *Holt Bonding Co. v. First Fed. Bank of Ark.*, 82 Ark. App. 8, 110 S.W.3d 298 (2003). We therefore affirm the trial court's award of attorney's fees.

Husband next argues that the circuit court erred in awarding Wife a \$250,000 life insurance policy as her sole property. The background of this point is as follows. In the August 2005 divorce decree, the parties settled some of the marital property issues. Included among those items was a provision that "[Husband] receives as his sole and separate property the 1.5 million ins. policy on his life w/ all cash surrender value. (\$7,800 [Wife's] equity)."⁷ However, Husband had two insurance policies: a \$1.25 million policy with cash value and a \$250,000 policy with no cash value. In its letter opinion, the circuit court noted that Husband would receive the \$1.25 million whole life policy with a cash value of \$14,316.04. The court had earlier noted that it found at a previous hearing that the parties did not intend for the \$250,000 policy to be part of the parties' settlement agreement.

There was no testimony in which the parties discussed their intentions in making the settlement agreement. Instead, the attorneys made statements as to whether the agreement covered one or both policies. Wife asserted that the \$250,000 policy was not discussed during the negotiations and relied on the fact that the agreement called for Husband to receive a *policy*, not *policies*, as well as the fact that the \$250,000 policy did not have any cash value. She also asserted that the focus was on the larger \$1.25 million policy because its cash value was considered in determining an equal division of the property. Finally, she pointed out that, if Husband died, her income from Husband's disability benefits would cease and she would need

⁷In her brief, Wife reads the parenthetical as providing her with \$7,200 in equity.

the smaller \$250,000 policy as protection. Husband's argument focused on the fact that the agreement provided that he would receive \$1.5 million in insurance, as well as the fact that he could not obtain other insurance on his life. The circuit court accepted the statements by counsel as a proffer and ruled that the \$250,000 policy was not part of the settlement discussions.

Questions relating to the construction, operation, and effect of such agreements are governed, in general, by the rules and provisions applicable in the case of other contracts generally. *Surratt v. Surratt*, 85 Ark. App. 267, 148 S.W.3d 761 (2004). The circuit court has the power to construe, clarify, and enforce the parties' settlement agreement. *Id.* In regard to the construction of terms in an agreement, the initial determination of the existence of an ambiguity rests with the circuit court. *Id.* If an ambiguity does exist, then the true intention of the parties must be determined, and the meaning of the terms of the contract becomes a question of fact. *Wedin v. Wedin*, 57 Ark. App. 203, 944 S.W.2d 847 (1997).

The parties' agreement as to the insurance policies was ambiguous because the agreement provided that Husband was to receive a single policy with \$1.5 million of coverage when, in fact, there were two policies that in the aggregate totaled \$1.5 million of coverage. We cannot determine the parties' intent without resorting to the proffered evidence. In such circumstances, the issue is one of fact for the circuit court. We do not find that the circuit court was clearly erroneous.

Finally, the circuit court's treatment of a loan from the Maruthur Diabetic Center to Husband is the subject of Husband's seventh point. During the course of the divorce proceedings, Husband borrowed \$28,000 from Maruthur Diabetic Center, his medical center.

He then used this money to improve the residence he was awarded pursuant to the parties' agreement. In the court's letter opinion, the loan was deemed to have been addressed by the parties' agreement. However, in the divorce decree, the court noted that the loan was marital property, used to solely benefit Husband. Therefore, Husband was ordered to be solely responsible for repayment of the debt. Husband argues that this is error because Wife is benefitting twice from the same money: once when it was used to increase the value of marital property and a second time when Husband repays the funds. A decision to allocate debt to a particular party or in a particular manner is a question of fact and will not be reversed on appeal unless clearly erroneous. *Ellis v. Ellis*, 75 Ark. App. 173, 57 S.W.3d 220 (2001).

The court accepted Husband's valuation of the residence in determining whether the division of the marital property was equal. That valuation indicated that the Arbor residence was valued at \$52,000. However, Husband makes no showing of how much, if any, the value of the residence increased as a result of his improvements made with the borrowed funds. The burden is on the appealing party to bring up a sufficient record showing error for our review. *Young v. Young*, 316 Ark. 456, 872 S.W.2d 856 (1994). It is impossible to determine if the circuit court erred in the instant case when we cannot determine the validity of Husband's argument that Wife is "double-dipping" in the form of twice benefitting from the same funds.

Wife raises one point on cross-appeal: that the circuit court erred in requiring her to repay Husband \$18,597.50 for one-half of his social security benefits. Her argument is that none of Husband's social security benefits were used during the pendency of the divorce to pay the parties' expenses and, therefore, she should not be required to pay Husband for one-half of those sums.

During the course of their marriage, the parties opened several (at least four) accounts at various banks. Upon the filing of the complaint for divorce, the circuit court entered an *ex parte* order freezing the parties' accounts. On Husband's motion, the court lifted the freeze. Ultimately, the court appointed a manager and made the manager the only person authorized to transact business on the parties' joint account ending in 7228. The court allowed Husband to have "unhindered access" to the account into which his social security benefits were deposited. Wife was allowed access to two accounts solely in her name, with all other accounts to remain frozen. The manager was the only person authorized to transact business on the account the parties used to manage their rental property. On June 24, 2004, the court entered an order directing the manager to take charge of the parties' income, specifically Husband's social security and disability benefits payments, as well as the rental income. The manager was then to pay various bills and distribute one-half of the remaining funds to each party. According to a worksheet attached to this order, each party was to receive approximately \$3,300 per month.

Social security benefits are excluded from the definition of "marital property." Ark. Code Ann. § 9-12-315(b)(6); *Gentry v. Gentry*, 327 Ark. 266, 938 S.W.2d 231 (1997). In her argument, Wife relies on the testimony of Marla Lammers, the certified public accountant appointed by the court to manage the parties' accounts. Lammers testified that Husband's social security benefits went into his personal account and not the parties' joint account she used to pay the parties' bills. She also did not have any evidence that the social security benefits went into a third account. Wife does not dispute that she received one-half of the parties' income during the pendency of the divorce. Nor does she dispute that Lammers made

adjustments to the joint account to compensate for her lack of access to the social security payments or that the funds in the joint account were equally disbursed between the parties. However, we do not know what those adjustments were or how the adjustments changed the distributions from the joint account. Therefore, Wife has failed to meet her burden to show error. *Young, supra*.

Finally, we address Wife's motion for attorney's fees and costs associated with preparing a supplemental abstract and addendum. We grant the motion only as to costs because some of the supplemental abstract was clearly for Wife's cross-appeal, which she had the responsibility to abstract.

Both parties included many unnecessary documents in their addendums, such as twenty-seven orders granting fees to the independent manager appointed by the court, as well as motions and orders on contempt petitions, discovery disputes, and substitution of counsel for Husband. None of these documents were necessary to the arguments made on appeal. Under Supreme Court Rule 4-2, the contents of both the abstract and addendum are supposed to be limited to only those items necessary to an understanding of the issues on appeal. We have pointed out that an abstract and addendum can be deficient for containing too much material, as well as too little. See *American Transp. Corp. v. Exchange Capital Corp.*, 84 Ark. App. 28, 129 S.W.3d 312 (2003); *Miller v. Hometown Propane Gas, Inc.*, 82 Ark. App. 82, 110 S.W.3d 304 (2003); *Frigon, supra*.

Affirmed on direct appeal; affirmed on cross-appeal; motion granted in part and denied in part.

HART and MILLER, JJ., agree.